IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.6143 OF 2002

Mr Mukund Vinayak Mhaskar, .. Petitioner.

Vs

1. General Manager,
India Security Press,
Nasik Road,
2. Deputy General Manager,
India Security Press,
Nashik Road,
3. The Administrative Officer,
India Security Press,
Nashik Road, .. Respondents

Mr Suresh S. Pakale, for the petitioner.

Mr P.M.Pradhan with Mr Suresh Kumar, for the respondents.

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.

DATE : 18.10.2005.

ORAL JUDGMENT : (Per D. B.Bhosale, J.)

1. This writ petition, under Article 226 of the Constitution of India, is directed against the Judgment

and order dated 5.6.2002 rendered by the Central Administrative Tribunal, Mumbai Bench, Mumbai dismissing Original Application No.804 of 1998 filed by the petitioner challenging the validity and propriety of the order dated 13.4.1998. By that order, the petitioner was reverted to the post of Upper Division Clerk which he was holding before his adhoc promotion to the post of Assistant Store Keeper.

2. The factual matrix that would be relevant and material for disposing of the instant writ petition is as follows: The petitioner joined the service of respondent no.1 on 13.12.1978 as Lower Division Clerk. In 1986, he was promoted to the post of Upper Division Clerk. On 30.9.1993, he was given additional responsibilities for which he was given special pay of Rs.70/-. On 31.10.1995, the petitioner was promoted to the post of Assistant Inspector Control on adhoc basis. However, before he took charge of the said post, respondent no.3 cancelled the promotion and issued amended order of adhoc promotion on 6.11.1995 requiring the petitioner to work as Assistant Store Keeper. The petitioner accordingly accepted the said order and resumed on work on 14.12.1995. The said promotion to the post of Assistant Store Keeper was for a temporary

period of six months. However, initially, it was extended upto 14.6.1997 and by order dated 17.5.1997 upto 16.6.1998. Respondent no.3, vide order dated 13.4.1998, reverted the petitioner to the post of Upper Division Clerk which aggrieved the petitioner and which ultimately led him to challenge his reversion by means of Original Application No.804 of 1998 before the Central Administrative Tribunal, Mumbai. The reversion was challenged on two grounds: firstly, there were two vacancies in the post of Assistant Inspector Control available on which he could have been accommodated and, secondly, that ignoring his rightful claim for promotion/transfer, his juniors were retained on the promotional posts. The Tribunal, however, dismissed the original application of the petitioner holding that the petitioner was promoted to the post of Assistant Store Keeper on adhoc basis to meet the exigencies of work and he was occupying the said post meant for the quota of industrial workmen and, therefore, he had no right to claim the said promotion or regularisation of his adhoc promotion on the said post. The Tribunal also took into account that pending these proceedings on 16.10.1998 the petitioner was given promotion to the post of Assistant Inspector Control on regular basis. The Recruitment Rules relating to Assistant Store Keeper were also taken

into consideration while dismissing the original application filed by the petitioner.

3. Mr Pakale, learned counsel for the petitioner, submitted that while reverting the petitioner, the seniority rule ought to have been followed by the respondents. The respondents ignored the petitioner's rightful claim for promotion over the juniors who were retained on the promotional post and wrongly reverted the petitioner to the post of Upper Division Clerk. It was next contended that his reversion has resulted in loss of two increments. According to Mr Pakale, two vacancies in the post of Assistant Inspector Control were available and there was absolutely no valid reason to deny the petitioner the said post and revert him to his original cadre. He further submitted that the post of Assistant Inspector Control and Assistant Store Keeper are equivalent and there was no bar in accommodating him on the other post. On the other hand, Mr Pradhan, learned counsel for the respondents, invited our attention to the Recruitment Rules and contended that the promotions to different posts are effected in accordance with the the said Rules and that the said post of Assistant Store Keeper was a selection post and it was reserved for the quota of Industrial workman. It

was further contended that the petitioner was holding the post of Assistant Store Keeper on adhoc basis and the said post was exclusively reserved to be filled by the workmen category and, therefore, the petitioner has no right to claim the promotion on the said post. Lastly, he submitted that in any case the petitioner, who was holding the said post on adhoc basis, has no right whatsoever to claim that post.

4. We perused the impugned order and other material placed before us with the assistance of the learned counsel appearing for the parties. The record reveals that the promotion of the petitioner to the post of Assistant Store Keeper was on adhoc basis and it was extended twice. The last extension was valid upto 16.6.1998. It further reveals that the India Security Press is an industrial unit which employ different sets of officers, staff and industrial workmen. Promotions to different posts are effected in accordance with the Recruitment Rules. As per the provisions of the notified Recruitment Rules, the post of Assistant Store Keeper, which is now re-designated as Deputy Store Keeper, is required to be filled by two methods, namely, by promotion from Upper Division Clerks in ministerial cadre to the extent of 75% and from Head Checker/Senior

Checker in industrial cadre for 25% of posts. The said post of Assistant Store Keeper is a selection post carrying pre-revised scale of pay and has to be filled in as such and is not available by right to anybody. Since the post is categorised as selection, it is clear that no one has any right, legal or otherwise, to claim promotion to the said post. The petitioner was holding the said post of Assistant Store Keeper on adhoc basis against a post which was exclusively reserved to be filled by workmen category and to meet exigencies of work. The respondents have categorically stated in their reply that 25% of the posts of Assistant Store Keeper were to be filled by industrial workmen and since no eligible industrial workman was then available, one post of Assistant Store Keeper was filled by ministerial cadre as an alternative method of promotion and at that time the petitioner was considered for promotion to the said post clearly on adhoc basis only. This statement has not been controverted by the petitioner. The rules also reveal that the post of Assistant Store Keeper and Assistant Inspector Control are not equal as claimed by the petitioner. It is thus clear that there is no violation of the Recruitment Rules while filling the post of Assistant Store Keeper and the respondents had no alternative but to revert him to his original post

from the post of Assistant Store Keeper which he was holding on adhoc basis at the relevant time. Insofar as the contention of the petitioner that he ought to have been promoted or transferred to the post of Assistant Inspector Control instead of reverting him to his original post is concerned, it deserves no consideration for a simple reason that pending the original application for disposal the petitioner had been promoted to that post since he was eligible and which he accepted unconditionally without any hesitation or reservation. He had also expressed his desire to have promotion on that post. It is against this backdrop, we find no merit in the writ petition. The writ petition, therefore, fails and is dismissed as such. Rule is discharged.

(D.B.BHOSALE, J.) **(V.G.PALSHIKAR, J.)**

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.6143 OF 2002

Date of Judgment:

October 18, 2005

For approval and signature

THE HON'BLE MR.JUSTICE V.G.PALSHIKAR.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur

Aurangabad or Goa offices?